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QUO WARRANTO—SCOPE OF ACTION—NOT AVAILABLE AS WRIT OF REVIEW.—The defendant drainage district, pursuant to a decree of the circuit court extending its boundaries, included the lands of the relators. An information in the nature of a *quo warranto* was instituted alleging that the defendant had unlawfully exceeded its franchise and praying judgment of ouster. *Held*, that the action would not lie. *State, ex rel. Manion, v. Albany Drainage District* (1921, Mo.) 234 S. W. 339.

An information in the nature of a *quo warranto* is employed to-day in three classes of cases: (1) Against public officers in determining disputed questions of right to hold public office; (2) against private corporations as the appropriate means of testing the right to exercise corporate franchises and as the proper corrective for misuser, nonuser, or abuse of such franchise; (3) against municipal corporations to determine the title by which such bodies exercise their franchise and to correct existing usurpations. High, *Extraordinary Legal Remedies* (3d ed. 1896) chs. 14, 15, 16. In any case, it will lie only for the redress of grievances in which the public has an interest, although incidental to the relator's own injury. *People, ex rel. Samuell, v. Cooper* (1891) 139 Ill. 461, 29 N. E. 872; Spelling, *Injunctions and Other Extraordinary Remedies* (2d ed. 1901) sec. 1773. An extraordinary remedy, it is exclusive and not available on behalf of a private relator where the grievance may be redressed by any other action, legal or equitable. *People v. Hillsdale Turnpike Co.* (1807, N. Y.) 2 John. 190; *Commonwealth, ex rel. Hunter, v. Smaill* (1913) 238 Pa. 106, 85 Atl. 1088; see COMMENTS (1908) 18 YALE LAW JOURNAL, 58. Where another remedy for the redress of the grievance is provided by statute, unless it is clearly shown that the statutory method is to be exclusive, the tendency is to hold that *quo warranto* will also lie. High, *op. cit.* sec. 617 a. Its issuance rests in the discretion of the court. *Att'y-Gen'l, ex rel. Mann, v. City of Methuen* (1921, Mass.) 129 N. E. 662; *People v. City of Le Roy* (1920) 293 Ill. 278, 127 N. E. 695. For the Missouri rule see *State, ex rel. McAllister, v. Cupples Power Co.* (1920) 283 Mo. 115, 223 S. W. 75. Consequently, it may be refused when the petitioner has been guilty of laches or a waiver or estoppel can be shown. See *State, ex rel. Independent School Dist., v. Hall* (1921, Iowa) 181 N. W. 633. In the instant case, the information disclosed no grievance in which there was a substantial public interest and the relator had another full and complete legal remedy. The court considered a drainage district as in effect a municipal corporation and followed the usual rule in refusing to employ *quo warranto* to pass upon the irregular or improper exercise of recognized powers. *State v. City of Lyons* (1871) 31 Iowa, 432; *Price v. County School Trustees* (1917, Tex. Civ. App.) 192 S. W. 1140. Furthermore, where the lower court had proper jurisdiction, *quo warranto* cannot be invoked as a writ of review. *State, ex rel. Cole, v. Norborne Land Drainage District Co.* (1921, Mo.) 234 S. W. 344; *People, ex rel. Cash, v. Wells* (1920) 291 Ill. 584, 126 N. E. 575.

RESTRAINT OF TRADE—CLAYTON ACT—RESTRICTING USE OF CONTAINER IN SALE OF CONTENTS—TITLE REMAINING IN VENDOR.—The plaintiff sold acetylene gas in tanks to customers under a contract retaining title to the tanks in itself, requiring an initial deposit and return of the tanks when empty, in exchange for which it agreed to supply a filled tank for the price of the gas. The defendant, engaged in a similar business, was soliciting the plaintiff's customers and refilling the plaintiff's tanks with its own gas. The plaintiff sought an injunction and the defendant claimed that the tank contracts were in violation of sec. 3 of the Clayton Act. Act of Oct. 15, 1914 (38 Stat. at L. 730). *Held*, that the method of dealing with the tanks was not in violation of the Clayton Act. *Auto Acetylene Light Co. v. Prest-o-Lite Co.* (1921, C. C. A. 6th) 276 Fed. 537.

A reasonable restriction on the use of real property in a contract of lease or sale is enforceable. *Cowell v. Spring Co.* (1879) 100 U. S. 55; 10 Rose's Notes,

836; see 3 Williston, *Contracts* (1920) sec. 1642. The use of personality after sale cannot be restricted even though the article is patented. *Motion Picture Patents Co. v. Universal Film Co.* (1917) 243 U. S. 502, 37 Sup. Ct. 416. But before the Clayton Act conditions might be imposed in a lease of personality unless the lessor was illegally dominant in its particular field of trade. See *United States v. United Shoe Machinery Co.* (1918) 247 U. S. 32, 55, 38 Sup. Ct. 473, 482; see COMMENTS (1918) 27 YALE LAW JOURNAL, 1060; see also *Quincy Oil Co. v. Sylvester* (1921, Mass.) 130 N. E. 217. Under section 3 of the Act, if the lease restricts the use of competitors' wares, goods, or merchandise so as to substantially lessen competition, the restrictive condition is void. *United States v. United Shoe Machinery Co.* (1916, E. D. Mo.) 234 Fed. 127, (1920, E. D. Mo.) 264 Fed. 138. The inherent or potential viciousness of the contract or lease itself, not its present operative effect, is the test as to whether it may substantially lessen competition. The purpose of the Act is to prevent rather than cure. See *Standard Fashion Co. v. Magrane Houston Co.* (1918, D. Mass.) 254 Fed. 493, 499; see *United States v. Shoe Machinery Co.* (1916, E. D. Mo.) 234 Fed. 127, 150. This interpretation differs from that of restraint of trade under the Sherman Act in that no power to restrain need be shown, i. e., the size of the concern making the lease or contract has no effect. Cf. opinion of Brown, J., in *Standard Fashion Co. v. Magrane Houston Co.* (1919, C. C. A. 1st.) 259 Fed. 793, 801 (judgment must be based on evidence of effect and on a reasonable belief that there is a dangerous probability of lessening competition). It has been held that a trading stamp concern may by contract restrict subscribers to giving out stamps to customers only and enjoin third parties from using them for their own advertising; *Sperry & Hutchinson Co. v. Fenster* (1915, E. D. N. Y.) 219 Fed. 755; that a manufacturer of syrup may restrict its bottling to licensed bottlers; see *Coca-Cola Co. v. J. G. Butler & Sons* (1916, E. D. Ark.) 229 Fed. 224, 232; that a publishing company, having built up a staff of newsboys throughout the country, may restrain their handling other publications even after sale to district agents. *Pictorial Review Co. v. Curtis Publishing Co.* (1917, S. D. N. Y.) 255 Fed. 206 (the boys remained Curtis agents even though title to the magazine had passed to district agent). But a restriction not to handle other patterns in a two-year contract of sale was held void. *Standard Fashion Co. v. Magrane Houston Co.* *supra*. Yet leasing a gas pump on condition that only the lessor's gas be used in the pump was legal. *Canfield Oil Co. v. Fed. Trade Com'n.* (1921, C. C. A. 6th) 274 Fed. 571; *Sinclair Oil Co. v. Fed. Trade Com.* (1921, C. C. A. 7th) 276 Fed. 686. In the instant case there clearly was not a sale of the container. No restriction as to the use of a competitor's gas was imposed except that of not refilling the tank with another's gas. The dominant part of the transaction was the sale of the gas. Certainly a manufacturer need not supply a rival with containers by force of the Clayton Act unless he contracts to do so. Nor can such an arrangement substantially lessen competition. It will be of interest to see the future development of the term "substantially lessen competition." It is the teeth of section three of the Act. The tendency seems to be to give it a stricter interpretation than that applied to a reasonable restraint of trade under the Sherman Act. See NOTES (1917) 30 HARV. L. REV. 72.

SET-OFF AND COUNTERCLAIM—CHOSE IN ACTION ASSIGNED BEFORE MATURITY SUBJECT TO SET-OFF FOR CLAIM AGAINST ASSIGNOR ACQUIRED BEFORE NOTICE OF ASSIGNMENT.—The defendant made a contract to pay one Nolan, after one year, a minimum license fee for certain manufacturing privileges. Before the expiration of the year, Nolan assigned the contract to the plaintiff, who brought suit to recover the amount due. The defendant pleaded, as a set-off, a claim he held against Nolan on another contract acquired before notice of the assignment. *Held*, that the set-off should be allowed. *Nordsell v. Neilsen* (1921, Minn.) 184 N. W. 1023.